



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

June 14, 2021

Members of the Board of Supervisors,

This comment letter supplements the June 14, 2021 memo of the Environmental Quality Advisory Council's (EQAC) opposition to the proposed agritourism zoning ordinance amendment changes. The following was discussed at the May and June 2021 EQAC meetings.

While EQAC appreciates the proposals put forth by the Planning Commission at their May 19, 2021 meeting<sup>1</sup>, **EQAC does not support the zoning ordinance language as written as it does not do enough to protect our drinking water supply.** EQAC opposes any changes to zoning regulations that has the potential to significantly degrade the environment in the Watershed Protection Overlay District (WPOD) area, with a critical focus in the R-C areas of the WPOD.

EQAC understands the benefits gained from adding clarity to the County's current zoning language to ensure predictability in the overall economic opportunities available to local farms associated with agritourism. Doing so can allow landowners to conserve agricultural land and support their agricultural business. However, the Board must not allow economic options at the expense of Comprehensive Plan and downzoning commitments previously made by the County to prevent degradation of our regional drinking water.

## THE WATERSHED PROTECTION OVERLAY DISTRICT

The most environmentally important area affected by these proposed zoning changes is the Watershed Protection Overlay District, covering primarily large sections of Sully and Springfield Districts<sup>2</sup>. Our 2019 EQAC Annual Report on the Environment provides a brief history of the fight the County won to save our drinking water quality:<sup>3</sup>

*In 1982, "...the Board took action to protect the Occoquan watershed. More than 38,500 acres of property were down-zoned from one-acre to five-acre development, "citing a study that predicted the Occoquan reservoir could turn into a smelly swamp if some action is not taken...the Board's 1982 downzoning action was upheld in a*

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<sup>1</sup> Planning Commission proposal: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/zoning%20ordinance/proposed%20amendments/agritourism/pc-memo-5-19.pdf>

<sup>2</sup> Reference map in Appendix 1 at the end of this letter, created using the County's JADE mapping system

<sup>3</sup> 2019 EQAC Annual Report p. 38: <https://www.fairfaxcounty.gov/environment-energy-coordination/sites/environment-energy-coordination/files/assets/2019%20eqac%20annual%20report%20complete.pdf#page=38>

*landmark 1985 Circuit Court decision. The decision preserved the five-acre zoning of the watershed, helping to protect the water quality of the Occoquan Reservoir. It also reinforced the ability of local governments in Virginia to implement their comprehensive plans and enabled jurisdictions to effectively plan for the future.”*

Furthermore, Fairfax County’s Comprehensive Plan for Area III, which encompasses nearly all of the Watershed Protection Overlay District, provides this very clear summary of how the Low Density Residential Areas<sup>4</sup> was created to protect our drinking water quality:

*“The primary purpose of Low Density Residential Areas is to ensure the preservation of environmental resources by limiting development primarily to low density, large lot residential and open space uses. The loss of natural habitat coupled with the vital role that portions of these areas serve in protecting water quality dictates that development in these areas be minimized. These are stable areas of little or no change.”*

It is also critical to note that on July 22, 1982, a regional water-supply agreement comprised of eight separate contracts<sup>5</sup> was signed which designates the Occoquan River, along with the Patuxent River in Maryland, as the backup water supply for the entire Washington, DC Region, should the Potomac River suffer insufficient flow. Parties to this agreement include Maryland, Virginia, Washington, DC, and the US. Army Corps of Engineers. Preserving water quality in the Occoquan watershed is, therefore, a matter of National importance.

EQAC is concerned that there is no mention of these important land-use designations and agreements in the staff report, as environmental impacts to this area are important to understand and avoid.

The 40<sup>th</sup> anniversary of the downzoning is approaching in 2022. Looking back, for the 20<sup>th</sup> anniversary, the Report of the New Millennium Occoquan Watershed Task Force<sup>6</sup> was published, providing an overview of where we came from and where we were heading. The forward, by then-Fairfax County Board of Supervisors Chairman Hanley on January 27, 2003, is a chilling reminder about how important this fight to continue to protect the Occoquan Reservoir drinking water:

*“We must remain vigilant. Twenty years ago our citizens rallied for an important cause. Because of their dedication, and with continuing community participation and*

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<sup>4</sup> Comprehensive Plan for Area III p.7: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/comprehensiveplan/planhistoric/2017/area3/overview/10-16-2018.pdf#page=7>

<sup>5</sup> Sheer, Daniel P., 1985, "Managing Water Supplies to Increase Water Availability." In: National Water Summary 1985, U.S. Geological Survey Water-Supply Paper 2300, p. 111-116: <https://pubs.er.usgs.gov/publication/wsp2300>

<sup>6</sup> 2003 Report of the New Millennium Occoquan Watershed Task Force: <https://www.novaregion.org/DocumentCenter/View/247/OTFFinalReport12703>

*County staff and agency expertise, we have ensured a protected source for safe drinking water. This is an important part of the quality of life we enjoy in Fairfax County today.”*

This 2003 report is not mentioned in the agritourism staff report either, despite its explicit discussion of the impact of “Land Use and Open Space Protection – The Key to Both Reservoir and Watershed Protection”. A section of the 2003 report discusses “The Zoning, Planning, and Existing Land Use Context” and explores how by-right development, such as being sought here through this expanded definition of agritourism, is a threat to this critical regional backup drinking water supply.

### OCOQUAN WATERSHED MONITORY LABORATORY PERSPECTIVE

At the meeting with County Staff, EQAC members asked if any environmental experts had been contacted to help inform the proposed changes. Staff said they met with Dr. Adil Godrej from the Occoquan Watershed Monitoring Laboratory to provide additional context and clarity on topics discussed April 8, 2021 memo<sup>7</sup>. Staff reported that the impacts would have minimal impact on the environment. EQAC members then requested a meeting with Dr. Godrej who agreed that he met with staff, but that the discussion focused on the environmental impact *if* the recommendations were implemented and that there was no feasible scientific way to measure that impact.

Dr. Godrej’s scientific opinion as expressed to EQAC was that this zoning change should *not* be allowed in the protected, downzoned areas. Anything that removes protections from the downzoned area is a concern and he felt that changes in the zoning language did just that. Please refer to the important letter that Dr. Godrej forwarded to the Board directly. EQAC concurs with his concern about continued encroachment and reduction of protections. While the changes in impervious surface additions from one farm cannot be measured due to the small size, as usage expands over time, the collective impact can in fact be significant: death of the WPOD’s R-C protections by a thousand cuts.

Dr. Godrej’s concerns about this proposal are significant enough that his closing statement at the May 12, 2021 Planning Commission Public Hearing included: "I strongly believe that at this time the amendment approval process should be paused and an advisory committee be [constructed] to provide input."

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<sup>7</sup> Staff Response Memorandum - Follow-up from January 14, 2021 Land Use Process Review Committee: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/zoning%20ordinance/proposed%20amendments/agritourism/lupr-memo-4-6-21.pdf#page=2>

## DISCUSSION TOPICS FROM MAY AND JUNE 2021 MEETINGS

### 1. **Require a Special Exception for Agritourism in WPOD's R-C Areas**

EQAC appreciates and supports the Planning Commission's proposal to eliminate large-scale, one-off events such as corporate picnics and weddings. However, upon further discussion in June, EQAC members oppose the allowance of by-right agritourism in our most environmentally sensitive areas. Doing so jeopardizes the Watershed Protection Overlay District's R-C areas explicitly mentioned above as requiring protection from expanded development due to environmental degradation.

As mentioned by Shannon Curtis from Fairfax County Stormwater in the May 19, 2021 Planning Commission meeting "In studying the watershed,...typically between 5-10%, there's a noticeable decline in ...the ecological quality of the stream... The R-C overlay district...we see those watersheds are generally around 5% impervious. They are right at the sweet spot before we notice declines due to increased land development."<sup>8</sup>

The Code of Virginia states that no locality shall regulate agritourism activities at an agricultural operation unless there is a substantial impact on the health, safety, or general welfare of the public<sup>9</sup>. While the staff report indicates that the code does not identify any criteria by which to measure those impacts, negative effects on our region's drinking water supply qualifies under the code.

Degradation of environmental assets through increased impervious surfaces and additional load on septic systems will degrade regional drinking water quality. Clean water is necessary to ensure both the health and general welfare of the public. Requiring a Special Exception for agritourism uses in WPOD's R-C areas could allow for development conditions which would provide a greater opportunity to manage the environmental impacts of the development.

### 2. **Explicitly prohibit paved parking on agritourism sites within the R-C areas of Watershed Protection Overlay District, with the exception to support limited paved parking for accessibility purposes**

EQAC appreciates the Planning Commission's proposal to limit the amount of impervious surface in the R-C. However, EQAC recommends changing the language to only allow the minimum impervious surface as is required by law for accessibility parking.

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<sup>8</sup> Planning Commission meeting 1hr 12 min. mark:

[http://video.fairfaxcounty.gov/player/clip/2107?view\\_id=10&redirect=true](http://video.fairfaxcounty.gov/player/clip/2107?view_id=10&redirect=true)

<sup>9</sup> VA state code on agritourism: <https://law.lis.virginia.gov/vacode/title15.2/chapter22/section15.2-2288.6/>

Staff's guidance that "the standards do not require parking spaces to be designated or paved" does not go far enough to protect areas of highest environmental concern in terms of threats to our regional water supply: paved parking should be prohibited in the R-C part of the WPOD with the exception to support limited paved parking for accessibility purposes.

EQAC has documented the connection of Impervious Surfaces and Damaged Streams<sup>10</sup> in our annual report. Increased impervious surface will ultimately negatively impact our drinking water. And while compaction will remain an issue even if parking areas remain unpaved, staff could provide maintenance recommendations to ensure parking areas remain as permeable as possible to help ensure minimal impacts on our drinking water.

**3. Revisit the concept of by-right tiers of use**

Staff provided a range of the total number of attendees per day, for each of the four agritourism tiers defined, for Board consideration. EQAC asked for clarification of how these ranges were selected and was told they are based on estimates of current and expected future uses. EQAC suggests the tiers include environmental protection considerations that discourage large-scale commercial development in the R-C and ensures the influx of people does not pollute ground water (e.g. due to increase septic usage). If they must be designated, the tier maximum should be as small as possible and should require permits for special large uses.

**4. Establish an Advisory Committee to Review Standards and Guidelines Impacting the R-C District and Public Uses in the Occoquan**

EQAC appreciates and supports the Planning Commission's recommendation to consider prioritizing the current Priority 2 Item on the Zoning Ordinance Amendment Work Program (ZOAWP) to establish an advisory committee to, among other things, review standards and guidelines associated with special permit, special exception, and public uses in the R-C District as well as review the Comprehensive Plan to determine if clearer guidance is needed for special permit, special exception, and public uses in the Occoquan. This recommendation was included on Page 51 in the 2003 New Millennium Occoquan Task Force report<sup>11</sup>.

EQAC wishes to note that this change is broadly applicable to land use impacts such as zoning ordinances changes and would provide long term environmental benefits as the County pursues resiliency and climate initiatives.

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<sup>10</sup> EQAC Annual Report p. 97: <https://www.fairfaxcounty.gov/environment-energy-coordination/sites/environment-energy-coordination/files/assets/2019%20eqac%20annual%20report%20complete.pdf#page=97>

<sup>11</sup> Page 51: <https://www.novaregion.org/DocumentCenter/View/247/OTFFinalReport12703#page=51>

## ADDITIONAL ISSUES

Staff discussed with EQAC the nature of operations at Paradise Springs, Bull Run Winery, and Cox Farms. The environmental impacts of these commercial developments in the R-C do not appear to have been taken into consideration when crafting this new zoning ordinance amendment language. Consideration of how this broadened definition of agritourism opens the door to *more* environmental impacts also does not appear to have been considered. EQAC members believe these negative environmental impacts of continued impervious surface via parking lots and possible expanded road networks to support this expansion will continue to compound if we allow this by-right commercial development in the WPOD's R-C.

## IN CONCLUSION

EQAC opposes the current zoning language as written and asks that the Board of Supervisors consider the above recommendations for changes that would better preserve the County's most delicate environmental resources in the Watershed Protection Overlay District. The Comprehensive Plan for the Pohick Planning District<sup>12</sup> (which encompasses a large area of the Occoquan downzoned areas) underscores the importance of mitigating impacts to health while preserving the area's environmental integrity:

*"Preservation of the water quality is of significant value to the public health and welfare."*

Thank you for your consideration of these comments on the proposed agritourism zoning amendment. We would be pleased to work with the Board of Supervisors to develop the specific language needed to make the proposed changes acceptable.

Sincerely,  
Stella Koch, Chairman

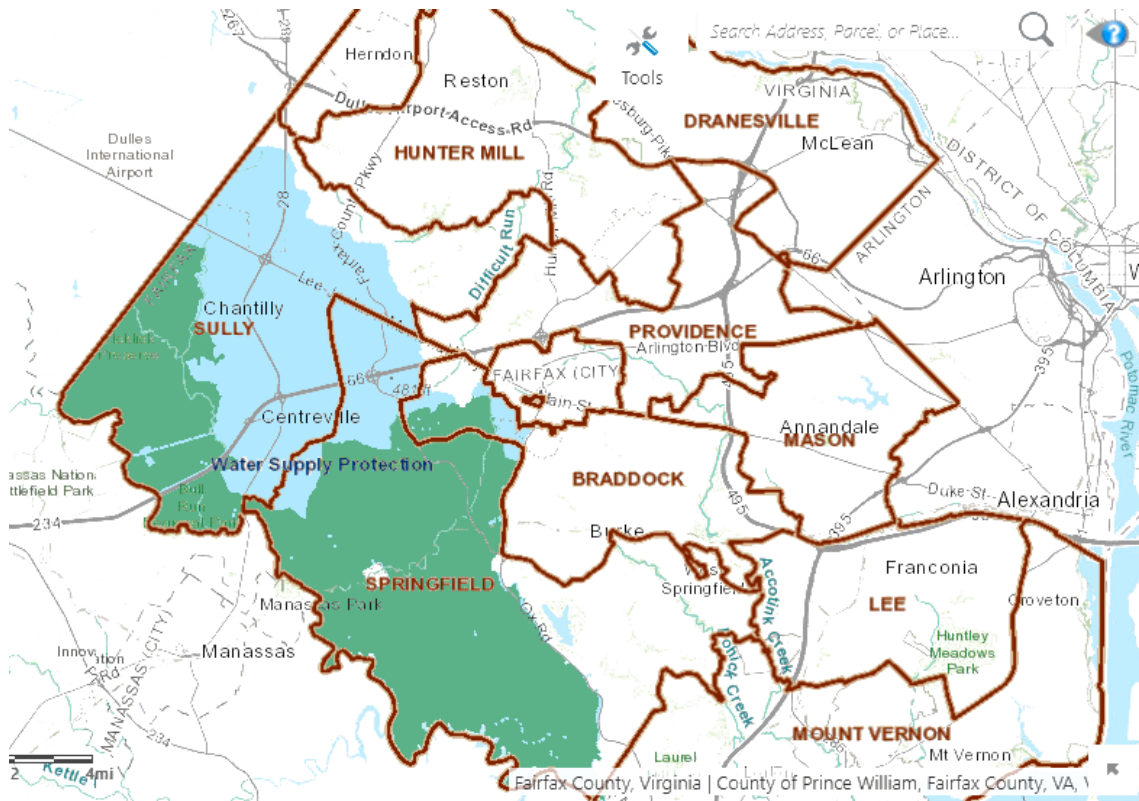
*Attached: Appendix 1*

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<sup>12</sup> Pohick Planning District Comp Plan: <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/compplan/area3/pohick.pdf>



**Appendix 1:** Map of the Watershed Protection Overlay District (light blue) and the *overlaid* portion of the County's R-C (green), encompassed by the WPOD.<sup>13</sup>



<sup>13</sup> Map produced using JADE:

<https://www.fairfaxcounty.gov/GeoApps/Jade/Index.html?configBase=https://www.fairfaxcounty.gov/GeoApps/Geocortex/Essentials/REST/sites/Jade/viewers/Jade/virtualdirectory/Resources/Config/Default>